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June 7, 2002

VIA FEDERAL EXPRESS

Mr. David Wadell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505


Re: Complaint of US LEC of Tennessee Against Electric Power Board of
Chattanooga, Docket No.: 02-00562

Dear David:

We have enclosed an original and 13 copies of the Electric Power Board's Motion in Opposition to Commencement of a Contested Case or Motion to Dismiss along with the Affidavits of Harold E. DePriest and Steven W. Lawrence. We have also enclosed an extra copy of each of these documents, and would appreciate your returning a stamped copy to us in the enclosed self-addressed, stamped envelope.

Please let us know if you have any questions.

Sincerely,



Mark W. Smith
For the Firm

MWS/gb
Enclosures
cc: Henry Walker, Esq. (w/enc.)
Guy M. Hicks, Esq. (w/enc.)
EPB/TEL-USL - #12

REGULATORY AUTH.

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Docket No. 02-00562
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The Complaint of US LEC centers around three basic allegations: (i) that EPB Telecommunications should not use “EPB” in its name (Complaint, ¶ 6); (ii) that EPB has refused an unidentified third party access to its underground facilities (Complaint ¶ 7); and (iii) that EPB has failed to issue internal audit reports and file them with the TRA (Complaint ¶ 8). None of these allegations present claims upon which relief may be granted and, as a matter of law, no hearing is required for the disposition of this matter. EPB respectfully submits that the TRA should exercise its discretion and refuse to commence a contested case; or, in the alternative the TRA should dismiss US LEC’s Complaint.

1. EPB Telecommunications is an appropriate name for EPB's telecommunications division. With respect to the use of the EPB Telecommunications name, it appears that US LEC misunderstands the organizational structure of the telecommunications division of EPB. In Paragraph 6 of its Complaint, US LEC accuses EPB of "giving the public the impression that both telecommunications and electric services are provided by the same entity" In fact, EPB Telecommunications is part of the same legal entity as EPB, and this organizational structure is provided by the 1997 legislation that authorized EPB to initiate its telecommunications project. See T.C.A. § 7-52-401 (authorizing a municipality "acting through the authorization of [its electric system]" to provide telecommunications services). In footnote 4 of its Complaint, US LEC also states that the telecommunications division of Memphis Light, Gas and Water ("MLGW") does business as Memphis Networkx. This statement is also incorrect. As the materials on file with the TRA in Docket No. 99-00909 show, MLGW's telecommunications division and Memphis Networkx are separate and distinct. MLGW's telecommunications division does not provide telecommunications service; Memphis Networkx does. Memphis Networkx is a Tennessee limited liability company, and MLGW's telecommunications division is one of its members. Unlike EPB Telecommunications, Memphis Networkx is a separate legal entity, and US LEC's comparison is not valid. US LEC's Complaint in this regard is without merit on its face and lacks any grounds for commencing a contested case.

In the alternative, EPB Telecommunications is an appropriate name for EPB's telecommunications division, and US LEC's contentions are patently unfounded. The TRA should dismiss this aspect of US LEC's Complaint.

2. EPB has not denied access to its underground facilities. With respect to US LEC's contention that EPB has refused an unidentified third party access to its underground facilities and associated right of ways, at the outset, EPB would note that US LEC's filings with the United States Securities and Exchange Commission admit that US LEC does not own transport facilities and, therefore, would have no need for underground facilities or rights of way. See US LEC Form 10-Q for the quarterly period ending March 31, 2002 at note 1, "Cost of Services" ("US LEC, as part of its 'smart-build' strategy, does not currently own any fiber or copper transport facilities.".)¹ Nonetheless, EPB's Vice President of its Engineering Division has investigated this claim and has determined that the Engineering Division has not received any third party requests for access to its underground facilities and associated rights of way at any time since the TRA granted EPB its certificate of convenience and necessity. See Affidavit of Stephen W. Lawrence. Accordingly, there is no basis in this contention for opening a contested case; or, in the alternative, the TRA should dismiss this aspect of US LEC's Complaint.

3. EPB's internal auditors have issued internal audit reports, but EPB is not required to automatically file those reports with the TRA. With respect to US LEC's contention that EPB's internal auditors have failed to issue internal audit reports, EPB submits that its internal auditors have, in fact, issued internal audit reports. See Affidavit of Harold E. DePriest. With respect to US LEC's contention that EPB has failed to file internal audit reports with the TRA, EPB submits that it is not required to automatically file those audit reports with the TRA. US LEC's Complaint is in error when it contends that the Second Revised Proposed Conditions ("Proposed Conditions") referenced at page 5, footnote 2 of the Order Approving Application for

¹ Available at http://realtimefilings.nasdaq.com/edgar_conv_html/2002/05/15/0001021408-02-007169.html (visited June 7, 2002).

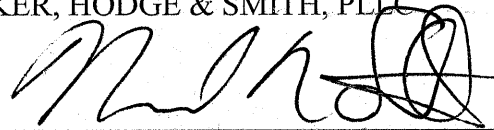
a Certificate of Public Convenience and Necessity, Docket No. 97-07488 (May 10, 1999) (the "Order"), requires EPB to automatically file its internal audit reports with the TRA. Neither the Proposed Conditions nor the Order requires such a filing. Upon careful review of footnote 2 of the Order, it is apparent that this footnote is designed to summarize – rather than override or revise – the Proposed Conditions. The Proposed Conditions, in turn, at page 19 require that EPB make available any written findings of EPB's internal audit staff to the TRA upon request, but there is no requirement to automatically file such reports. Because EPB's internal auditors have, in fact, issued audit reports and because EPB is not required to automatically file these reports with the TRA, this contention serves no basis for commencing a contested case, or, in the alternative, the TRA should also dismiss this final aspect of US LEC's Complaint.

WHEREFORE, based upon the foregoing, EPB requests that the TRA determine not to commence a contested case; or, in the alternative enter an order dismissing US LEC's Complaint.

Respectfully Submitted,

STRANG, FLETCHER, CARRIGER,
WALKER, HODGE & SMITH, PLLC

By:



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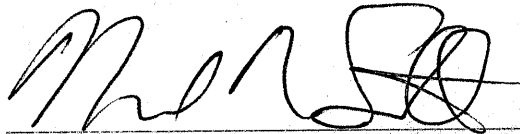
CERTIFICATE OF SERVICE

I certify that a true and exact copy of this pleading has been served upon the following attorneys by delivering a true and exact copy thereof to the offices of said counsel or by placing a true and exact copy of said pleading in the United States mail addressed to said counsel at his office with sufficient postage thereupon to carry the same to its destination:

Henry Walker
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414 Union Street, Suite 1600
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Guy M. Hicks
BellSouth Telecommunications, Inc.
333 Commerce Street
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Nashville, Tennessee 37201

This 7th day of June, 2002.



For: Strang, Fletcher, Carriger, Walker,
Hodge & Smith, PLLC